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6 Attorneys for Chapter 11 Trustee
KYLE EVERETT

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8 **UNITED STATES BANKRUPTCY COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **OAKLAND DIVISION**

11 In re

12 PACIFIC THOMAS CORPORATION, dba
13 PACIFIC THOMAS CAPITAL, dba
14 SAFE STORAGE

15 Debtor.

Case No. 12-46534 MEH

Chapter 11

16 KYLE EVERETT, Chapter 11 Trustee,

17 Plaintiff,

18 vs.

19 RANDALL WHITNEY aka RANDALL C.M.
20 WHITNEY aka RANDALL WORSLEY aka
21 RANDALL C.M. WORSLEY, an individual;
22 PACIFIC TRADING VENTURES dba SAFE
STORAGE MANAGEMENT COMPANY, a
23 California corporation; PACIFIC TRADING
24 VENTURES, LTD. ("PTVL"), a Nevada
corporation; and JILL V. WORSLEY aka V.
JILL WORSLEY, an individual,

25 Defendants.

Adv. Proc. No. 13-04079

**DECLARATION OF KYLE EVERETT
IN SUPPORT OF EMERGENCY
MOTION FOR ISSUANCE OF
TEMPORARY RESTRAINING ORDER
AND ORDER TO SHOW CAUSE FOR
PRELIMINARY INJUNCTION**

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1 I, Kyle Everett, declare as follows:

2 1. On January 16, 2013, the Bankruptcy Court entered its Order Approving
3 Appointment of Trustee, pursuant to which I became the duly appointed, qualified and acting
4 Chapter 11 trustee (the "Trustee") of the bankruptcy estate of the Pacific Thomas Corporation dba
5 Pacific Thomas Capital dba Safe Storage ("PTC").

6 2. I am informed and believe that PTC is the record owner of real property located at
7 2615 E. 12th Street, 2783 E. 12th Street, 2801 E. 12th Street, 1111 29th Avenue, 1113-15 29th
8 Avenue, and adjacent parking lots, in Oakland, California (the "Premises"). The Premises
9 generate revenue and include tenants Performance Contracting, Inc., Budget Truck Rental, Avila
10 Trucking, Mujeres Unidas Activis, and other local contractor parking. The Premises also contain
11 eleven buildings that are utilized as self-storage facilities (the "Safe Storage Facility").

12 3. Since my appointment as trustee on January 16, 2013, I have expended significant
13 resources in attempting to obtain books, records, and accounts concerning the management and
14 operation of the Premises, including the Safe Storage Facility. The books, records, and accounts
15 that I have sought are documents that are basic to the preservation and administration of assets of
16 PTC's bankruptcy estate, and to the determination of PTC's liabilities, from parties that were and
17 are expected to maintain such documents. Importantly, neither Randall Whitney ("Whitney"),
18 Chief Operating Officer and Chairman of the Board of PTC, nor Pacific Trading Ventures
19 ("PTV") as the manager of the Safe Storage Facility, nor PTV's Chief Operating Officer, Jill V.
20 Worsley ("Worsley"), have cooperated with my efforts to review and obtain books and records
21 (including the detailed daily parking support) relating to the current and historical rents received
22 in connection with the Safe Storage Facility, the commissions due by Budget Truck Rental, which
23 I am informed and believe is owned by Worsley and required to pay a portion monthly to PTC,
24 and local contractor parking. I am informed and believe that PTV may have significant funds
25 coming into its possession each month, but not turned over PTC's estate.

26 4. I am informed and believe that Whitney, PTV and/or Worsley have withheld
27 significant funds from PTC's estate by misrepresenting that PTC had leased the Safe Storage
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1 Facilities to PTV. I am informed and believe that the assertion that a lease of the Safe Storage
2 Facility to Pacific Trading Ventures exists is part of a scheme to siphon funds that properly
3 belong to PTC's bankruptcy estate and are collateral of the secured lenders.

4 DOCUMENTS REQUIRED

5 5. As of the date of this declaration, I still have yet to receive the complete books and
6 records of PTC. The books and records that have been produced were produced in a disorganized
7 manner. As of the date of this declaration, I am still missing, among other things:

8 a. A detailed accounting of all funds received, or disbursed, by non-debtor
9 entities, on behalf of PTC in connection with the Premises, including but not limited to the Safe
10 Storage Facility, for each of the 12 months immediately prior to PTC's bankruptcy filing date of
11 August 6, 2012 (the "Petition Date") and each of the months from the Petition Date through the
12 present, including, but not limited to, access to all system and source data for all the funds
13 received or disbursed in connection with the Safe Storage Facility.

14 b. All books and records, including, but not limited to, all banking statements
15 and cancelled checks, detailing all funds received, or disbursed, by non-debtor entities, on behalf
16 of PTC in connection with the Premises, including but not limited to the Safe Storage Facility, for
17 each of the 12 months immediately prior to the Petition Date and each of the months from the
18 Petition Date through the present, including, but not limited to, access to all system and source
19 data;

20 c. A historical rent roll, for each of the 12 months immediately prior to the
21 Petition Date and each of the months from the Petition Date through the present, for all properties
22 owned by PTC, including tenant payment dates, check numbers, and payment amounts, the period
23 for which the tenant payments were made, and the current tenant unpaid balances;

24 d. A list of the location(s) where any remaining books and records of PTC can
25 be found;

26 e. A copy of all of PTC's QuickBooks files, wherever located;

27 f. All of PTC's books and records, whether or not they reside on computers
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1 belonging to PTC;

2 g. All monthly expense reconciliations between PTC and PTV;

3 h. All business records of any dba of PTC, including, but not limited to, Safe
4 Storage and Pacific Thomas Capital, or a statement under penalty of perjury that no business
5 records of such dba exist;

6 i. For each transfer that PTV has made to PTC since the Petition Date, (i) the
7 PTV check number (or identification of wire transfer), (ii) the transfer date, (iii) the tenant(s) for
8 which the transfer is made, (iv) the location of the property and number of spaces used if it is for
9 parking; and

10 j. All documents relating to all insurance policies covering some or all of the
11 Premises.

12 6. Whitney, PTV and Worsley have repeatedly failed and refused to provide me with
13 access to the books, records, and accounts detailing the funds received, and disbursed, on behalf
14 of PTC, solely to deprive PTC's estate of funds that it is entitled to receive, which are also the
15 secured lenders collateral, and records needed for the continued administration and operation of
16 PTC's estate. Based on a report provided as of January 29, 2013, I am informed and believe that
17 the Safe Storage Facility had a capacity of approximately \$152,000 of monthly rental income at
18 standard rates and was generating approximately \$114,000 of monthly rental income (with
19 approximately 75% occupancy).

20 7. Absent the books, records, and accounts detailing the funds received, and
21 disbursed, on behalf of PTC, it is difficult to establish whether the funds that PTC was supposed
22 to set aside in separate accounts opened to segregate the cash collateral of Bank of the West,
23 Summit Bank, Private Mortgage Funding and Private Capital Investments contain balances that
24 accurately reflect each secured party's cash collateral.

25 TRUSTEE'S ATTEMPTS TO OBTAIN RECORDS

26 8. Below summarizes my attempts to acquire the information and documents needed
27 to preserve and administer assets of PTC's bankruptcy estate, as well as to determine PTC's
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1 liabilities. My attempts to obtain these books and records have been met with consistent hurdles
2 and roadblocks raised by Whitney and Worsley.

3 9. On January 23, 2013, I sent a letter to Whitney requesting: (a) a current rent roll
4 and a historical rent roll, for the past 12 month period immediately prior to the Petition Date for
5 all properties owned by PTC; (b) bank account statements and cancelled checks; (c) a list of the
6 location(s) where the books and records of PTC can be found; and (d) a list of all personal
7 property owned by PTC. I further instructed Whitney not to remove, alter, or destroy any
8 business records of PTC. A true and correct copy of my January 23, 2013 letter is attached hereto
9 as Exhibit A.

10 10. On January 28, 2013, I sent a letter to Whitney noting that Whitney had failed to
11 provide a rent roll for the Safe Storage Facility, contact information for each tenant of the
12 Premises, and a statement of arrears for each of the identified tenants. In addition, I informed
13 Whitney of security protocols to ensure preservation of PTC's business records. A true and
14 correct copy of my January 28, 2013 letter is attached hereto as Exhibit B. As of the date of this
15 Declaration, I still have received no historical rent roll for the Safe Storage Facility from
16 Whitney.

17 11. Whitney initially refused to provide me with a copy of PTC's QuickBooks file,
18 asserting that he needed to see first whether Timothy Brophy had provided a copy to me. After I
19 informed Whitney that I had requested the QuickBooks file in PTC's possession, Whitney
20 provided a QuickBooks file on a flash drive that included activity after the Petition Date, although
21 I requested all of the books and records of PTC. In addition, Whitney indicated that he had
22 deleted all other versions that may have existed because he believed that they were not "correct"
23 or "reconciled" and were not the "official" versions of PTC's books. Whitney further asserted
24 that the only version of QuickBooks at PTC's Premises covered only the period after the Petition
25 Date. Finally, Whitney claimed that the most current data for PTC resided on many different
26 computers in Walnut Creek belonging to PTV and intermingled with data from multiple
27 companies. Whitney would not allow me to take a copy of all data on these computers, but
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1 instead offered to provide records that he interpreted to be PTC's data. Although my associate,
2 Tyler Julian, was given access to review certain files under Whitney's login address on two
3 computers, Mr. Julian could not access other user login addresses and the data accessible to those
4 addresses. Whitney's confirmation that prior copies of PTC's QuickBooks were deleted leaves
5 me uncertain whether all records have been retained. Attached hereto as Exhibit C are true and
6 correct printouts of emails and true and correct copies of letters that I sent to Whitney on January
7 31, 2013 evidencing my attempt to obtain PTC's QuickBooks file and Whitney's failure to
8 cooperate.

9 12. On February 6, 2013, in response to Whitney's assertion that he had "delivered a
10 complete set of books and record," I noted to him that he had acknowledged that some of PTC's
11 books and records resided on computers that he claims belong to PTV. Attached hereto as
12 Exhibit D are true and correct printouts of emails sent between me and Whitney on February 6,
13 2013. In addition, on February 5, 2013, I reiterated to Whitney that his assertion that books and
14 records of PTC resided on computers not belonging to PTC raised additional access issues. A
15 true and correct copy of my February 5, 2013 letter is also attached hereto under Exhibit D.

16 13. On February 20, 2013, I notified Whitney that I had not received any of the
17 monthly expense reconciliations between PTC and PTV, and reiterated my request to have access
18 to all of PTC's books and records, wherever they resided. I further asked Whitney to identify the
19 remaining books and records, and their location. Attached hereto as Exhibit E is a true and
20 correct copy of the February 20, 2013 letter. As of the date of this Declaration, I have yet to
21 receive the monthly expense reconciliations from November 2012 onward, and have received
22 only the August, September, and October 2012 reconciliations from PTC's attorney's records. In
23 addition, from my review of the monthly expense reconciliations from August 2012 through
24 October 2012, a number of the payments that the estate is being asked to reimburse appear to be
25 third party pre-petition claims of professionals. I am unaware of any order of this Court
26 approving payments to professionals for claims incurred prior to the Petition Date.

27 14. I remain concerned that Whitney has failed to provide me with a rent roll for the
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1 Safe Storage Facility. I have been denied books and records relating to the current and historical
2 rents received in connection with the Safe Storage Facility.

3 15. I have reviewed certain orders entered in the action filed by Summit Bank against
4 Pacific Thomas Corporation in the Superior Court of the State of California, County of Alameda
5 (the "Superior Court"), designated as Action No. RG11-574626. On July 6, 2012, the Superior
6 Court entered its Order re Summit Bank's Application for Order re Contempt against Pacific
7 Thomas Corporation and Randall Whitney (the "Contempt Order"), a true and correct copy of
8 which is attached hereto as Exhibit F. The Contempt Order states that PTC and Whitney are in
9 violation of orders of the Superior Court ordering PTC to "turn over all property as required...."
10 The Contempt Order further states, "The Court finds that Pacific Thomas and Whitney have
11 violated the Court Orders of January 20, 2012 and March 2, 2012. Their violations of this
12 Court's Orders were willful, without good cause or substantial justification."

13 16. It is extremely disconcerting that Whitney has failed to provide the books, records,
14 and accounts detailing the funds received, and disbursed, on behalf of PTC in connection with the
15 Safe Storage Facility. I am informed and believe that the Safe Storage Facility generates an
16 estimated \$114,000 each month. The lack of information deprives PTC's estate with funds that it
17 is entitled to receive and records needed for the continued administration of PTC's estate. The
18 alleged "lease" with PTV requires payments of \$70,000 for that space. Despite this reduced
19 amount (approximately \$44,000 less than potential rents per month since the filing date) under
20 the alleged "lease", based on the records provided to date, PTV is not current to PTC on the
21 payments for the Safe Storage Facility and owes approximately \$100,000.00 of back "rents"
22 primarily related to the Safe Storage Facility.

23 17. Since my appointment as Trustee, I have also expended considerable efforts to
24 obtain information from PTV, which, pursuant to a written Management Agreement (the
25 "Management Agreement"), as amended on January 1, 2011, agreed to provide property
26 management services for the Safe Storage Facility in exchange for a management fee of \$2,000,
27 or 6% of gross revenue, among other agreed-upon compensation.

1 18. On February 5, 2013, I sent a letter to Worsley, requesting an accounting of all
2 payments made to PTV and a detailed accounting of all funds received or paid out on behalf of
3 PTC. Under the Management Agreement, PTV is obligated to make available, for inspection and
4 audit, the books, records, and accounts, including those related to all receipts and disbursement, in
5 connection with the management and operation of the Safe Storage Facility. The information that
6 I requested is basic information that a manager is expected to have, including the name of the
7 Safe Storage Facility tenant that made each payment, the amount and date of a payment, and the
8 period for which the payment is made. PTV, as manager of the Safe Storage Facility, ought to be
9 in a position to provide the check number, date, and amount, as well as the payee for
10 disbursements **that they have made** on PTC's behalf. A true and correct copy of my February
11 5, 2013 letter to Worsley is attached hereto as Exhibit G. To date, I still do not have most of this.

12 19. On February 6, 2013, I received a fax from Worsley, stating that my demand was
13 "upsetting" and that it provided "no details." In addition, Worsley left me a voice message on
14 February 6, 2013 indicating that my request for information was "ridiculous." I replied to
15 Worsley, noting that I had requested very basic information that PTV, as property manager, is
16 expected to have readily available, including reports that it provided to PTC, the property owner.
17 I also informed Worsley that I had specifically requested an accounting of all payments which
18 were made by PTV, as well as an accounting of all funds received, or paid out, on behalf of PTC.
19 I further reminded Worsley that PTC had provided no detail of the payments which were
20 purportedly made by PTV or the payments made by PTV on behalf of PTC. To date, I have
21 received only a printout of the non-parking tenant payments from PTV QuickBooks, which
22 excludes any data from the storage facility. Worsley has not provided me with basic data
23 concerning the receipts and disbursements in connection with the operation of the Safe Storage
24 Facility. I also have not received this information in the books and records that Whitney has
25 provided to date. True and correct copies of correspondence between me and Worsley on
26 February 6, 2013 and February 7, 2013 are attached hereto as Exhibit H.

27 20. I am informed and believe that the Safe Storage Facility generates approximately
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1 \$114,000 in proceeds from storage tenants each month. According to PTC's books and records,
2 since the Petition Date, in August 2012, to February 1, 2013, PTV has paid PTC \$431,715.81.
3 PTC's books and records show that PTV has been billed \$574,615.75, leaving \$142,899.94 owing
4 to PTC. As of the date of this date of this filing, at least \$95,190.35, relating almost entirely to
5 the Safe Storage Facility, is owing from PTV to PTC's estate. In addition, PTC's books and
6 records show a pre-petition note receivable balance of \$735,418.73 and account receivable of
7 \$194,415.17. In a February 8, 2013 letter to Worsley, a true and correct copy of which is attached
8 hereto as Exhibit I, I advised Worsley that PTC's books and records reflect these balances owing
9 to PTC.

10 21. On February 20, 2013, I wrote again to Worsley, noting that she had yet to provide
11 all tenant payment histories, including payment dates, check numbers, payment amounts and the
12 period for which the payments were made. For the Safe Storage Facility, Worsley has not
13 provided a current tenant status report showing the amounts that PTV has collected from the Safe
14 Storage Facility tenants each month since the Petition Date. Prior to my appointment, many of
15 the funds were transferred directly by PTV into PTC's individual lender collateral accounts as
16 lump sum transfers that appear to cover multiple tenants and multiple periods, and lack any detail
17 breakdown. For the most recent payments, the notations on the checks from PTV do not provide
18 adequate information to allow me to confirm the underlying source for such payments. I have
19 requested that PTV provide, for each transfer or payment that PTV has made to PTC since the
20 Petition Date, (a) the PTV check number (of identification of wire transfer), (b) the transfer date,
21 (c) the tenant(s) for which the transfer is made, (d) the location of the property and number of
22 spaces used if it is for parking. I also previously requested the details of payments made by PTV
23 on behalf of PTC, including the check number, check date, amount, and payee. Rather than
24 provide any detailed information, PTV initially only provided a single monthly amount which
25 purports to represent the total payments on behalf of PTC each month. Subsequently, I obtained
26 the reconciliations for the months of August, September, and October 2012 and a handful of
27 haphazard invoice copies from Whitney discussed below. A true and correct copy of my
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1 February 20, 2013 letter to Worsley detailing PTV's failure to provide the required data is
2 attached hereto as Exhibit J.

3 22. On March 4, 2013, in advance of a meeting with Worsley, I again noted in a letter
4 to her that my requests for detailed information on tenant payments have been ignored. I am
5 informed and believe that PTV may have significant funds coming into its possession each
6 month, but not turned over PTC's estate. To date, Worsley has only provided summary
7 information as to the funds that PTV has transferred to PTC by simply indicating whose collateral
8 account the funds are being deposited into. For the Safe Storage Facility, Worsley has not
9 provided current monthly reports, which the Management Agreement requires. I reminded
10 Worsley that I also twice previously requested the details of all payments made by PTV on behalf
11 of PTC, including the check number, check date, check amount, and payee. Other than the
12 reconciliations for the months of August, September and October 2012, which were received
13 from the files from PTC's counsel and not Defendants, I have received only a handful of invoices,
14 many with only handwritten notations. These invoices were recently provided by Whitney in
15 connection with my continuing requests. The summary provided by Worsley indicates that PTV
16 has paid \$36,818.67 of expenses on behalf of PTC through January 2013. The total of the
17 invoices, which had to be manually summarized as opposed to PTV providing a QuickBooks
18 printout, totaled \$33,748.37 and was only through December 2012. The invoices included
19 approximately \$15,000 of payments which PTV had made for pre-Petition Date insurance
20 payments and which included coverage for PTV's offices. Some of the invoices paid were
21 professional payments on account of pre-Petition Date services. Approximately \$7,500 of these
22 expenses are items that I do not believe are obligations of PTC, and instead are expenses of the
23 management company, including personal cell phones for management company personnel,
24 office supplies and shuttle service for the parking. This is an example of the half-measure
25 information that Defendants have provided intermittently. A true and correct copy of my March
26 4, 2013 letter to Worsley is attached hereto as Exhibit K.

27 23. On March 7, 2013, I met with Worsley. My March 4, 2013 letter to her included
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1 an agenda that summarized the documents/information that I had requested earlier, but still had
2 not received from PTV: (a) tenant payment histories since the Petition Date, (b) Safe Storage
3 Facility payment history since the Petition Date, (c) historical parking space rental information
4 since the Petition Date, and (d) details of PTV payments made on behalf of PTC including copies
5 of canceled checks and invoices. At our meeting, Worsley flatly refused to provide me with
6 access to the books and records relating to the current and historical rents received or unpaid for
7 the Safe Storage Facility. Worsley also informed me that someone at the management company
8 on the premises of the Safe Storage Facility determined who had parked on the Premises that day
9 and would be required to pay for such parking and that the daily logs were at the Premises. She
10 informed us that her accountant would obtain those logs and provide us with the information to
11 verify the historical parking payments. On March 28, I was at the storage facility and was
12 informed by Randall Whitney that the process above was generally what has been done
13 historically, but added that the information about who had parked on the premises that day was
14 transmitted via e-mail to PTV each day. I am informed and believe that, at the time I met with
15 Worsley, PTV actually had the data I was requesting. As of the date of this declaration, we still
16 have not received that data. We have received, however, another spreadsheet which includes the
17 monthly parking information but again no books of records or other supporting documentation to
18 determine if these amounts are correct as were promised at the meeting. I did receive from
19 Whitney a copy of the Budget Trust Rental checks received by PTV for the period through
20 November 2012. The check copies are substantially higher than the summary provided by
21 Worsley; we have no supporting information since November 2012.

22 24. Following my meeting with Worsley, I prepared a draft spreadsheet of the unpaid
23 rents by secured lender as well as by tenant, based on the fiction that a lease between PTC and
24 PTV for the Safe Storage Facility existed and is effective. The draft analysis includes all
25 transactions that were billed and payments made, based on the information available to me from
26 PTV. Based on the fiction that a lease existed and is effective, PTV must pay PTC's estate
27 \$131,872.73, based solely on Post-Petition activity. It is likely that PTV has withheld
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1 significantly more rents from PTC. A true and correct copy of my March 19, 2013 letter to
2 Worsley, including the aforementioned spreadsheet, is attached hereto as Exhibit L.

3 25. I have also reviewed PTC's Schedule B [Dkt. #34], which identifies "Loans to
4 Shareholders" of \$206,290.00, a "Note receivable from Pacific Trading Ventures" of
5 approximately \$312,000, among other notes receivable. I require the books and records of PTC,
6 including its dealings with PTV, to determine the current status of this account and other
7 receivables.

8 26. The 2009, 2010, and 2011 income tax returns and QuickBooks for PTC show that
9 the operations of the Safe Storage Facility have been included in PTC's sworn income tax
10 statements, with (a) all storage tenant rents deposited into PTC's bank accounts; (b) all expenses
11 of the Safe Storage Facility operations included in PTC's income tax returns, including a
12 management fee paid to PTV on account of the storage tenant rents, and (c) the land, buildings,
13 fixtures, computers and equipment associated with the Safe Storage Facility included in PTC's
14 income tax returns.

15 27. Both Whitney and Worsley executed a Promissory Note dated July 27, 2007, a
16 copy of which is attached to the Trustee Declaration as Exhibit M, in favor of Summit Bank, that
17 states that, "As of 7-16-07, Borrower [PTC] does not have tenants." (Emphasis added).

18 28. At the January 7, 2013 hearing on the Court's Order to Appear and Show Cause
19 why a Chapter 11 Trustee should not be appointed, Whitney acknowledged and authenticated his
20 and Worsley's signatures to a lease dated 2008 between PTC and PTV that includes only 1500
21 square feet of the Morse Building located at 2783 East 12th Street and does not include the Safe
22 Storage Facility (the "2008 Lease").

23 29. The 2008 Lease, which was authenticated by PTC, is entirely inconsistent with the
24 2005 Lease. The 2005 Lease states that it is for a term of five years and includes the lease of
25 1,500 square feet at the Morse Building.

26 I declare under penalty of perjury that the above statements are true and that if called as a
27 witness I could and would testify to their truthfulness. This declaration is executed on the 11 day
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1 of April 2013 in San Francisco, California.
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/s/ Kyle Everett

KYLE EVERETT
Chapter 11 Trustee